

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

UNITED STATES OF AMERICA,

v.

FILED

NOV 08 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

CLIFTON BURCH and
PETER MCKEAN,

U 17-175 CRB

DEFENDANT(S).

INDICTMENT

18 U.S.C. § 371 – Conspiracy to Defraud the United States;
18 U.S.C. § 1349 – Conspiracy to Commit Mail and Wire Fraud

A true bill.

[Signature]

Foreman

Filed in open court this 8th day of

November 2018

[Signature]

ROSE MAHER

Clerk

THOMAS S. HIXSON
UNITED STATES MAGISTRATE JUDGE

Bail, \$

NO PROCESS

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☐ INDICTMENT
☒ SUPERSEDING
OFFENSE CHARGED
 18 U.S.C. § 371 – Conspiracy to Defraud the United States;
 18 U.S.C. § 1349 – Conspiracy to Commit Mail and Wire Fraud.

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

 PENALTY: Count 1 - 5 years in prison, 3 years supervised release, \$250,000 fine, and \$100 special assessment.
 Count 2 - 20 years in prison, 3 years supervised release, \$250,000 fine, and \$100 special assessment.

+

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DEFENDANT - U.S.

CLIFTON BURCH

DISTRICT COURT NUMBER

17-0175 CRB

FILED**NOV 08 2018**
 SUSAN Y. SOONG
 CLERK, U.S. DISTRICT COURT
 NORTH DISTRICT OF CALIFORNIA
PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Federal Bureau of Investigation

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form Alex G. Tse

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned)

Cynthia Frey

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

 1) ☒ If not detained give date any prior summons was served on above charges
2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)**IS IN CUSTODY**4) ☐ On this charge5) ☐ On another conviction
☐ Federal ☐ State
6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☒ NO PROCESS* ☐ WARRANT

Bail Amount: no bail

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☐ INDICTMENT
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Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DEFENDANT - U.S.

PETER MCKEAN

DISTRICT COURT NUMBER
17-0175 CRB
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 SUSAN Y. SOONG
 CLERK, U.S. DISTRICT COURT
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☒ U.S. Attorney ☐ Other U.S. Agency

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If "Yes" give date filed

DATE OF
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

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Date/Time:

Before Judge:

Comments:

ALEX G. TSE (CABN 152348)
United States Attorney

FILED

NOV 08 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 17-0175 CRB
Plaintiff,)	
v.)	VIOLATIONS: 18 U.S.C. § 371 – Conspiracy to
)	Defraud the United States; 18 U.S.C. § 1349 –
CLIFTON BURCH and)	Conspiracy to Commit Mail and Wire Fraud
PETER MCKEAN)	
Defendants.)	

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Defraud the United States)

1. From no later than on or about July 30, 2013, and continuing through a date at least on or about November 18, 2013, and no later than January 30, 2014, in the Northern District of California and elsewhere, the defendants

CLIFTON BURCH and
PETER MCKEAN,

and others known and unknown to the Grand Jury, did knowingly and intentionally conspire to defraud the United States, and an agency thereof, that is, the United States Department of Energy, by obstructing the lawful function of that federal government agency by deceitful or dishonest means, and one or more of the co-conspirators carried out an act to effect the object of the conspiracy.

PARTIES, PERSONS, AND ENTITIES

At all relevant times to this Superseding Indictment, with all dates being approximate and all date ranges both approximate and inclusive:

2. Co-conspirator DERF BUTLER was a business management consultant and President of Butler Enterprise Group, LLC, based in San Francisco. Butler Enterprise Group, LLC assisted small business enterprises, especially minority-owned businesses, in obtaining construction and other contracts with public entities.

3. Co-conspirator ANTON KALAFATI was President of B Side Inc., a construction company based in Oakland, California.

4. Defendant CLIFTON BURCH was President of Empire Engineering and Construction, Inc., a construction company based in Oakland and San Francisco, California.

5. Defendant PETER MCKEAN was Vice President of Townsend Management, Inc., a construction management company based in San Francisco, California.

6. Individual A represented himself as a real estate and commercial developer based outside California who was interested in pursuing development projects and construction contracts with public entities in California.

7. The United States Department of Energy ("DOE") was a department of the United States government that managed the United States' nuclear infrastructure, administered the country's energy policy, and funded scientific research. The DOE operated DOE national laboratories, a collection of federally-funded research centers throughout the United States, overseen for the purpose of advancing science and technology to fulfill the DOE mission.

8. The Lawrence Berkeley National Laboratory ("LBNL") was a DOE national laboratory located at the University of California, Berkeley ("UCB"). The DOE owned the LBNL buildings and funded the operations of LBNL. When new construction or renovation of existing buildings took place, funds of the United States government were used to pay for the construction or renovation.

9. Through a contract known as "the prime contract" between the DOE and the University of California Regents, UCB employees managed and operated the LBNL facilities.

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1 10. As to some contracts to construct or renovate LBNL buildings, the DOE conducted the
2 process of soliciting and reviewing bids and awarding the contracts. In doing so, the DOE contracting
3 officers were required to act in accordance with the practices and procedures set forth in Federal
4 Acquisition Regulations and Department of Energy Acquisition Regulations. Those regulations required
5 that contracting officers follow a purchasing system that utilized the best in commercial purchasing
6 practices and procedures, including, among other things, using effective competitive techniques,
7 acquiring quality products and services at fair and reasonable prices, maintaining the highest
8 professional and ethical standards, maximizing opportunities for small and minority-owned businesses,
9 and delivering on a timely basis the best value products and services necessary to accomplish the
10 purpose of the United States Government contract.

11 11. Pursuant to the provisions of the prime contract, the DOE delegated to UCB employees
12 the authority to engage in procurement for certain LBNL building construction and renovation contracts.
13 Pursuant to the prime contract, in such instances, UCB employees acted on behalf of DOE and solicited
14 and reviewed bids, and awarded contracts, in accordance with Federal Acquisition Regulations,
15 Department of Energy Acquisition Regulations, and practices and procedures approved by the DOE. In
16 doing so, UCB employees were required to engage in a purchasing system that met the same standards
17 as those followed by DOE contracting officers, as described in paragraph 17, above.

18 12. LBNL Building 84 was a DOE-owned LBNL building that was scheduled for renovation
19 utilizing federal funds. The solicitation of bids, review of bids, and awarding of the contract was to be
20 conducted by UCB employees pursuant to the prime contract.

21 MANNER AND MEANS OF THE CONSPIRACY

22 13. Beginning no later than on or about July 30, 2013 and continuing through a date at least
23 on or about November 18, 2014, and no later than January 30, 2014, the defendants, and co-conspirators
24 known and unknown to the Grand Jury, knowingly and intentionally engaged in an illegal scheme to
25 obtain the contract with the DOE to renovate LBNL Building 84, and thereby obtain United States
26 government funds to pay for the renovation, by means designed to impair, obstruct, and defeat the
27 lawful function of the DOE in awarding construction contracts through a fair, honest, and competitive
28 process.

1 14. Individual A represented to co-conspirators BUTLER and KALAFATI, and defendants
2 BURCH and MCKEAN that he was colluding with a DOE contracting officer who was responsible for
3 reviewing bids for the contract to renovate LBNL Building 84. Individual A represented to the
4 defendants that the contracting officer had guaranteed the contract to Individual A outside the normal
5 bid solicitation and review process. As part of the scheme to defraud, co-conspirators BUTLER and
6 KALAFATI, and defendants BURCH and MCKEAN knowingly agreed to assist Individual A's scheme
7 to obtain the LBNL Building 84 contract through collusion with the contracting officer. The defendants
8 entered into this agreement with their co-conspirators and with Individual A in exchange for a promise
9 by Individual A that they would receive either a financial reward or a financial benefit in the form of
10 contracting work from Individual A once he was awarded the LBNL Building 84 renovation contract.

11 15. As further part of the scheme to defraud and to assist Individual A in winning the
12 contract to renovate LBNL Building 84, co-conspirators BUTLER and KALAFATI, and defendants
13 BURCH and MCKEAN agreed to impair, obstruct, and defeat DOE's contract bidding and award
14 process by submitting, or participating in the submission of, fraudulent and non-competitive bids to
15 perform the renovation of LBNL Building 84. The defendants submitted bids to the DOE, or arranged
16 for the submission of bids to the DOE, in amounts dictated by Individual A that were higher than the bid
17 Individual A represented he submitted to the DOE for the LBNL Building 84 renovation contract. The
18 defendants submitted these bids knowing that they were not genuine bids. The defendants did not
19 independently arrive at the bid number by reviewing the specifications for the project; did not intend to
20 perform the entire renovation project; and did not intend to perform work on the project for the amount
21 of their bids. The defendants submitted the bids to the DOE, or arranged for the submission of the bids
22 to the DOE, in amounts higher than Individual A's bid for the purpose of artificially ensuring that
23 Individual A's bid on the LBNL Building 84 renovation was the lowest bid. In doing so, the defendants
24 intended to undermine DOE's fair and competitive bidding process and to assist the DOE contracting
25 officer whom they believed was colluding with Individual A to award the LBNL Building 84 renovation
26 contract to Individual A.

27 ///

28 ///

OVERT ACTS

16. As part of the conspiracy and to carry out its objects, the defendants, together with other co-conspirators known and unknown to the Grand Jury, committed or caused to be committed, the following overt acts, among others, in the Northern District of California and elsewhere.

a. On July 18, 2013, BUTLER met with Individual A in San Francisco, California, and BUTLER agreed to locate contractors to submit bids for the DOE contract in amounts higher than Individual A's bid. BUTLER proposed that instead of Individual A paying the contractors for submitting the bids, Individual A could give the bidders sub-contracting work once Individual A won the contract. During the meeting, Individual A gave BUTLER \$2,000 in cash.

b. On or about July 29, 2013, BUTLER emailed BURCH to arrange for BURCH to attend a meeting with BUTLER and Individual A.

c. On or about July 29, 2013, BUTLER emailed and texted KALAFATI to arrange for KALAFATI to attend a meeting with BUTLER and Individual A.

d. On July 30, 2013, Individual A met with BUTLER, KALAFATI, and BURCH in San Francisco. BUTLER, KALAFATI, and BURCH agreed that KALAFATI and BURCH would separately submit bids to DOE for the LBNL Building 84 renovation project in amounts dictated by Individual A and higher than Individual A's bid of \$5.7 million. After KALAFATI and BURCH left the meeting, Individual A gave BUTLER \$9,000 in cash.

e. On July 31, 2013, BUTLER and Individual A met and Individual A gave BUTLER an additional \$4,000 in cash.

f. On August 14, 2013, BUTLER, KALAFATI, and Individual A had a telephone conversation during which BUTLER, KALAFATI, and Individual A discussed KALAFATI submitting a bid to DOE in the amount of \$6.7 million.

g. On August 15, 2013, BUTLER had a telephone conversation with Individual A during which BUTLER told Individual A that BURCH would be submitting a bid of \$7.1 million to DOE.

h. On or about August 19, 2013, KALAFATI mailed a letter via Federal Express to the DOE contracting officer at the US DOE Berkeley Site Office quoting a bid for B Side, Inc. to perform

1 the renovation of LBNL Building 84 for \$6,696,000.

2 i. On or about August 26, 2013, BURCH mailed a letter via Federal Express to the DOE
3 contracting officer at the US DOE Berkeley Site Office quoting a bid for Empire Engineering &
4 Construction, Inc. to perform the renovation of LBNL Building 84 for \$7,125,000.

5 j. On September 5, 2013, BUTLER proposed that Individual A use MCKEAN as the
6 contract manager for the LBNL Building 84 renovation project. Later the same day, BUTLER
7 introduced MCKEAN to Individual A.

8 k. On September 30, 2013, BUTLER met with Individual A in San Francisco and asked for
9 an additional \$15,000 from Individual A. BUTLER also discussed the payment that he expected to
10 receive once Individual A was awarded the contract for the LBNL Building 84 renovation.

11 l. On October 1, 2013, MCKEAN met with Individual A in San Francisco and agreed to
12 submit a bid on the LBNL Building 84 project in the amount of \$6.2 million. At the end of the meeting,
13 MCKEAN and Individual A spoke on the phone with BUTLER and discussed MCKEAN's agreement
14 to submit the \$6.2 million bid.

15 m. On October 3, 2013, MCKEAN, on behalf of Townsend Management, Inc., emailed a
16 letter addressed to the DOE contracting officer submitting a lump sum bid for \$6,200,000 to perform the
17 LBNL Building 84 renovation.

18 n. During a meeting between MCKEAN and Individual A on October 3, 2013 in San
19 Francisco, in which BUTLER participated by phone, MCKEAN and BUTLER agreed to recruit one
20 more bidder to submit a bid higher than Individual A's bid for the LBNL Building 84 project.

21 o. During a phone conversation with Individual A on October 25, 2013, BUTLER said he
22 had arranged for another contractor ("Contractor A") to submit a bid in the amount of \$6.3 million.

23 p. On November 18, 2013, defendant MCKEAN and co-conspirator BUTLER met with
24 Individual A and Contractor A to discuss the LBNL Building 84 project.

25 q. On January 30, 2014, BUTLER, KALAFATI, BURCH, and MCKEAN met to discuss
26 the LBNL Building 84 contract.

27 All in violation of Title 18, United States Code, Section 371.

28 ///

1 COUNT TWO: (18 U.S.C. § 1349 – Conspiracy to Commit Mail and Wire Fraud)

2 17. Paragraphs 2 through 16 of this Superseding Indictment are hereby re-alleged and
3 incorporated by reference as if set forth in full herein.

4 18. From a date on or about at least July 30, 2013, and continuing through a date at least on
5 or about November 18, 2013, and no later than January 30, 2014, in the Northern District of California
6 and elsewhere, the defendants,

7 PETER MCKEAN and
8 CLIFTON BURCH,

9 together with others known and unknown to the Grand Jury, conspired to devise a scheme and artifice to
10 defraud and to obtain money and property from Lawrence Berkeley National Laboratory (“LBNL”) by
11 means of materially false and fraudulent pretenses, representations, and promises, and did knowingly
12 conspire to use or cause to be used the mails, and to transmit and cause to be transmitted by means of
13 wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds,
14 for the purpose of executing and attempting to execute the scheme and artifice, in violation of Title 18,
15 United States Code, Sections 1341 and 1343.

16 All in violation of Title 18, United States Code, Section 1349.

17 DATED: 11/8/18

A TRUE BILL.

18 
19 FOREPERSON

20 ALEX G. TSE
21 United States Attorney

22 
23 JOHN H. HEMANN
24 Deputy Chief, Criminal Division

25 Approved as to form:

26 
27 C. FREY/W. FRENTZEN
28 Assistant United States Attorneys

FILED

NOV 08 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CRIMINAL COVER SHEET

Instructions: Effective November 1, 2016, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

CASE NAME:

USA v. CLIFTON BURCH, and, PETER MCKEAN

CASE NUMBER:

CR 17-0175 CRB

Is This Case Under Seal?

Yes No ☒

Total Number of Defendants:

1 2-7 ☒ 8 or more

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes No ☒

Venue (Per Crim. L.R. 18-1):

SF ☒ OAK SJ

Is this a potential high-cost case?

Yes No ☒

Is any defendant charged with a death-penalty-eligible crime?

Yes No ☒

Is this a RICO Act gang case?

Yes No ☒

Assigned AUSA

(Lead Attorney): CYNTHIA FREY

Date Submitted: 11/8/2018

Comments: